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Congress of the United States

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June 23, 2003

The Honorable John D. Ashcroft
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
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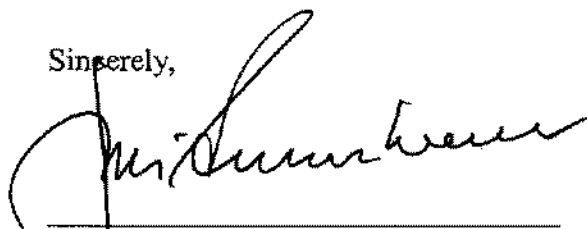
Dear General Ashcroft:

On behalf of the entire House Committee on the Judiciary, we would like to thank you for your appearance before the Committee's June 5, 2003 oversight hearing on the Department of Justice. Your testimony before the Committee concerning the implementation of the PATRIOT Act and the Department's ongoing war against terrorism was of crucial importance and will help guide the legislative and oversight priorities of the Committee in the coming months.

To provide the Committee with a more detailed understanding of current activities at the Department, we ask that you provide written responses to the following questions by September 1, 2003. Your responses to these questions will be included in the June 5, 2003 Committee hearing record.

Thank you again for your service and for your cooperation with this request.

Sincerely,



F. JAMES SENSENBRENNER, JR.
Chairman



JOHN CONYERS, JR.
Ranking Member

FJS/rf

1. The Department had previously advised this Committee that the FBI and the Department were taking additional steps to improve the efficiency of the Foreign Intelligence Surveillance Act (FISA) process. One of these steps was the creation of a FISA unit in November 2002, at FBI Headquarters that was charged with instituting an automated tracking system that would electronically connect the field divisions, FBI Headquarters, the FBI's National Security Law Unit, and the Office of Intelligence Policy Review (OIPR).
 - a. What is the status of this automated tracking system?
 - b. What are the other duties of the FISA unit?
 - c. Has operational efficiency improved since the Unit was created?
 - d. What other steps have been implemented to achieve optimum efficiency in the FISA application process?
2. Section 326 of the USA PATRIOT ACT requires financial institutions to implement reasonable procedures to verify the identity of any person seeking to open a bank account. The Treasury Department has promulgated regulations that would permit these institutions to accept identification cards issued by embassies and consulates of foreign governments, which can be susceptible to fraud. What is the DOJ's position on the Treasury Department's implementation of section 326 of the USA PATRIOT Act?
3. Has the United States Department of Justice offered any classified evidence in immigration proceedings that have been instituted since September 11, 2001?
4. In May 2003, the Justice Department published an interim regulation that provided a mechanism for the government to ask an immigration judge to place a "protective order" upon information that, while not classified, was sensitive and could damage law enforcement or national security interests if released beyond parties to a specific immigration case.
 - a. What are the government's concerns that prompted it to authorize protective orders in immigration cases?
 - b. Is this "protective order" mechanism the Justice Department's alternative to closed hearings?
 - c. In how many cases have protective orders been requested? Have any protective orders been granted?
 - d. If a protective order is granted, do the alien and the alien's counsel get access to the protected information?
 - e. Can the alien challenge the admissibility of the evidence that is protected by such an order?
 - f. Do Federal court judges have a similar ability to issue protective orders to prevent the dissemination of information introduced in Federal court?
 - g. Can a government attorney be sanctioned for disclosing information in violation

of an immigration judge's protective order?

5. Section 411 of the USA PATRIOT Act amended the Immigration and Nationality Act to broaden the scope of aliens ineligible for admission or deportable due to terrorist activities. In its May 13, 2003 response to Committee questions on USA PATRIOT Act implementation, the Department stated that: "Prior to the transfer of the INS to DHS, the INS had not relied upon the definitions in section 411 to file new charges against aliens in removal proceedings."
 - a. Does this mean that the Justice Department has not concluded that any of the aliens with whom it has dealt since the passage of the USA PATRIOT Act in October 2001 were terrorists? If not, why weren't these aliens charged under these provisions?
 - b. Have any aliens been charged with any terrorism-based ground of removal since September 11, 2001? If so, are these the only aliens with terrorist ties who have come to the attention of the Justice Department since September 11, 2001?
 - c. Are there reasons that the Justice Department or INS would not have charged an alien believed to have a connection to a terrorist group or terrorist acts with a terrorism-related ground of removal? If so, why?
 - d. How many aliens have been charged on terrorism-related criminal grounds since September 11, 2001? Are these the only aliens whom the Justice Department believes are related to terrorism?
 - e. Are there any reasons why the Justice Department would deport an alien who is suspected of terrorist ties or of engaging in terrorist activities rather than charging the alien criminally? Why would the Justice Department do this? Has the Justice Department done this?
6. The Department of Justice took a major step in tightening border security after September 11 by implementing the National Security Entry-Exit Registration System (or NSEERS), which required aliens to be fingerprinted, photographed and registered, both at the ports of entry and domestically. While control over this initiative passed to the Department of Homeland Security, what results do we have to show for this effort? Have any aliens linked to terrorism been identified through NSEERS? If so, how many? And have any criminal aliens been arrested through NSEERS?
7. How does the Civil Rights Division and the U. S. Attorney's office coordinate with local prosecutors in instances where civil rights cases are being prosecuted locally?

The Honorable Lamar Smith, Chairman, Subcommittee on Crime, Terrorism and Homeland Security

8. It is widely acknowledged that our nation's critical infrastructure is vulnerable to terrorist attacks. While we work to secure our airports, highways, and power plants, we must also ensure cyberspace is protected.

- a. Are we prepared to deal with the possibility of a cyber attack?
- b. Have you increased the level of prosecution for cyber crimes? If not, why? If so, can you quantify any decrease in the amount of cyber crime committed against interests in the United States?

The Honorable Chris Cannon, Chairman, Subcommittee on Commercial and Administrative Law

9. Press reports indicate that there may be a disagreement, or at the least, a debate within the government as how to proceed with the prosecution of Zacarias Moussaoui, now awaiting trial in federal court in the Eastern District of Virginia. The prosecution seems to be subject to an inordinate delay and it appears that the federal judge presiding in that case has questioned whether a federal criminal court is the appropriate forum. The *Washington Post* has characterized recently released court documents as revealing "a government and court system uncertain how to proceed against Moussaoui in a civilian court while trying to conduct an international war on terrorism and maintain national security." The judge reportedly has indicated that the Department of Justice's decision to try Mr. Moussaoui in a federal criminal court carried with it legal consequences and responsibilities.
 - a. Were the legal consequences and responsibilities of trying this matter in a federal criminal court contemplated?
 - b. Are you satisfied that a civilian court, and that one located in the Eastern District of Virginia, is the appropriate place to prosecute Mr. Moussaoui and, if so, are you satisfied with the progress of that case?
 - c. If that prosecution continues, can you predict when an actual trial is likely to begin or do you foresee continuing pre-trial motions, rulings and appeals which will further delay the matter?
10. During the 107th Congress, the House of Representatives passed the Federal Agency Portection of Privacy Act (FAPPA) requiring federal agencies to include a privacy impact analysis to be commented upon by the public when issuing regulations.
 - a. In a time when the threat of terrorism has caused the government to take unprecedented actions that understandably impact upon traditional spheres of personal privacy, would it not allay many citizen concerns about government intrusion and overreaching if new regulations were drafted with an articulated consideration of those citizen concerns?
 - b. Can we anticipate the support of the Department of Justice for legislation, such as FAPPA, which follows a reasonable approach and takes moderate steps to insure federal regulations consider legitimate privacy concerns?
11. Does the Justice Department, any agent of the Department, or contractor on behalf of the Department investigate or maintain files on people who are not legitimate suspects of crime or terrorism?
12. You may recall that I asked you during the June 5th hearing to comment on whether you

were aware of any data-mining efforts by any component within the Justice Department that collects information on individuals other than criminal suspects. As a follow-up to that query, I mentioned that I may want you to respond in writing.

- a. Accordingly, would you please provide your written response?
- b. In addition, are you aware of any agent of the Department or contractor on behalf of the Department that collects information on individuals other than criminal suspects?
- c. Does the Department investigate or maintain files on people who are not legitimate suspects of crime or terrorism?

13. What were the data sources used to identify the detainees rounded up following the September 11, 2001 attacks?

14. On May 31, a *Philadelphia Inquirer* editorial made the following observations:

Why, for instance, have so many criminal cases been mislabeled as instances of international terrorism? As Inquirer staff writer Mark Fazlollah has documented, dozens and dozens of people charged in such cases have proven to be unconnected to terror groups. Could someone be trying to hype the antiterrorism benefits of the new powers to build a case to extend them even further?

In New Jersey, federal prosecutors recently pulled 65 Middle Eastern students' cases from terrorism lists. They said the students' hiring of stand-ins to take English exams for college was not terrorism-related.

What is your response?

15. What would be your reaction to legislation that required the Justice Department to provide the following information to Congress on an annual basis:

- a. a public report on the total number of U.S. persons targeted for court orders under FISA and the number of persons targeted for electronic surveillance, physical searches, pen registers and business records; the names and identities of those targeted would not have to be revealed;
- b. a public report on the number of times that information acquired through a FISA order is authorized for use by the Attorney General in criminal proceedings; and
- c. a report to the House and Senate Judiciary Committees on surveillance of public and university libraries?

16. I think that there are two ways to look at the Fourth Amendment of the Constitution from a law enforcement perspective. One view gives it an interpretation favoring efficiency over personal protection. In other words, giving law enforcement the benefit of the doubt. The other views it as an ideal embodying traditional preservation of individual privacy rights that mandates the inefficiency of search and seizure for the sake of maintaining those rights.

Which view point is yours and how have you specifically implemented that philosophy

within the Department?

The Honorable Tammy Baldwin

17. Terrorism Investigations and Use of Statutory Authority

Prior to enactment of the USA PATRIOT Act, the evidentiary standard for a FISA order for business records was relevance and “specific and articulable facts” giving “reason to believe” that the person to whom the records related was an agent of a foreign power. The PATRIOT Act dropped the additional requirement that there be “specific and articulable facts giving reason to believe” that the person to whom the records related was an agent of a foreign power. So these records simply need to be relevant to a terrorism investigation.

- a. Does this permit the Department to obtain the business records of a person who is not an agent of a foreign power but is the target of a terrorism investigation?
- b. Does this also apply to a U.S. person who is the target of the investigation?
- c. Does this also apply to an American citizen who is the target of the investigation?
- d. Can the Department obtain the business records of a person who is not an agent of a foreign power nor the target of a terrorism investigation if it is determined that the records sought are relevant to such an investigation?
- e. Does this also apply to a U.S. person who is not an agent of a foreign power nor the target of a terrorism investigation?
- f. Does this also apply to an American citizen who is not an agent of a foreign power nor the target of a terrorism investigation?

18. During your testimony, there was some confusion about the scope of Section 215 of the USA PATRIOT Act. Please clarify which types of records could be obtained under Section 215.

- a. Does that include:
 - Book purchase records?
 - Library records of materials checked out?
 - Computer records?
 - Medical records?
 - Pharmaceutical records?
 - Educational records?
 - Firearm purchase records?
 - Membership lists from a club or association?
 - Membership lists from a religious institution?
 - Membership information (e.g. payments, services used, etc...)?
 - Tax records held by a tax preparer?
 - Political contributions?
 - Genetic information?

- b. Has the Department used Section 215 authority to obtain:
 - Library records of materials checked out?
 - Computer records?
 - Medical records?
 - Pharmaceutical records?
 - Educational records?
 - Firearm purchase records?
 - Membership lists from a club or association?
 - Membership lists from a religious institution?
 - Membership information (e.g. payments, services used, etc...)?
 - Tax records held by a tax preparer?
 - Political contributions?
 - Genetic information?
- c. Could the Department request an entire database of a business, association, religious institution or library under Section 215?

19. In his July 26, 2002 letter to the Judiciary Committee, then-Assistant Attorney General Daniel J. Bryant stated, in regard to Section 215, that "Under the old language, the FISA Court would issue an order compelling the production of certain defined categories of business records upon a showing of relevance and "specific and articulable facts" giving reason to believe that the person to whom the records related was an agent of a foreign power. **The PATRIOT Act changed the standard to simple relevance**" (emphasis added).

On numerous occasions in statements to the news media, DOJ spokespersons have stated that in order to examine someone's library records or book purchase records they must be an agent of a foreign power. As recently as May 22, 2003, the Associated Press reported that according to DOJ spokesman Jorge Martinez "the law only gives agents the power to research the library habits of 'agents of a foreign power' and won't be used to investigate 'garden-variety crimes'..." "We're not going after the average American, we're just going after the bad guy."---"Library Privacy; Librarians find ways around USA PATRIOT Act" by Allison Schlesinger of the Associated Press. DOJ spokesman Mark Corallo was quoted in the *Bangor Daily News* on April 4, 2003 saying that critics of Section 215 were "misleading the public" and that "the fact is the FBI can't get your records." It appears these statements are not true.

- a. Why are your spokespersons providing conflicting information about this law?
- b. What steps are you and the Department taking to ensure that accurate information is disseminated to our citizens?

20. Section 215 does not allow an investigation of a U.S. person if such an investigation is conducted "solely upon the basis of activities protected by the First Amendment to the Constitution."

- a. Would this limitation still allow an investigation based in part on activities protected by the First Amendment?
- b. What definition of "activities protected by the First Amendment" is used by the

department in evaluating a request for a FISA order?

- c. What procedures are in place to ensure that such orders are not sought solely on the basis of activities protected by the First Amendment of the U.S. Constitution?

21. DOJ spokesman Mark Corallo has been quoted as saying that the Department is considering holding public hearings around the country to explain and debate the USA PATRIOT Act (*Bangor Daily News*, April 4).

- a. Will the Department conduct a series of public hearings around the country on this topic?
- b. If so, will you make available high ranking DOJ officials to participate in these hearings to listen directly to the public?
- c. Will you provide other opportunities for the public to give input and feedback about changes to our criminal and foreign intelligence investigation laws and guidelines made since September 11, 2001 with the stated purpose of assisting in the war on terrorism?

22. As you know, a draft of the so-called PATRIOT Act II has been circulating in the media and on the web for several months. I accept your testimony that you are not planning to introduce it now or in the future in its current form. However, as you know, the USA PATRIOT Act was rushed through Congress with little time for the kind of extensive debate typically given to such a proposal. We can debate the need for moving it so quickly at that time, but I think we can agree that it was a very significant expansion of prosecutorial and investigative authority.

- a. Will you promise to engage in a full and complete debate over any additional powers or authorities that you request in the future?
- b. Can we have your personal assurance that you and the Department will not try to pressure the Congress, directly or through the media, to act on requests for expanded authority prior to a full and complete debate?

23. The USA PATRIOT Act made numerous changes that enhanced the power of the federal government to investigate and prosecute terrorism threats and crimes. Some of these powers apply only to terrorism investigations, while others are tools that apply to all federal investigations. Now that you have had time to use many of these tools, it would be very helpful to our oversight efforts to know which ones the Department finds most valuable and useful and which ones are less important, not used frequently, or unnecessary.

- a. Can you tell us which authorities have proved most useful and why?
- b. Can you also tell us which have not proven particularly useful and why?
- c. Can you tell us which authorities have not been used?
- d. Are there any authorities changed in the USA PATRIOT Act that you recommend Congress reverse or further limit?

24. As Attorney General you are charged with protecting and defending the rights guaranteed to American citizens in the Constitution. That includes their safety and security, but it

also includes their liberty and freedom.

- a. What recommendations would you make to modify the changes made in the USA PATRIOT Act to better protect the liberty and freedom of U.S. persons without significantly compromising our need to protect safety and security?
- b. Are their additional protections, beyond modification to the USA PATRIOT Act, that you can recommend to Congress to better protect our liberty and freedom?

The Honorable Jeff Flake

25. The response from the Department of Justice to the Committee's questions concerning its use of the USA PATRIOT Act states that DOJ has used "sneak and peek" warrants on 47 separate occasions, and have sought to extend the period of delay for notice 248 times.

Have these warrants been used in ordinary criminal cases, such as drug prosecutions unrelated to terrorism? If so, how many times?

26. Some libraries have made a practice of destroying computer records and other records in defiance of the PATRIOT Act, saying that they don't agree with it. These institutions are attempting to make it more difficult for the Justice Department to come in and actually search those records.

- a. Has any investigation been stymied as a result of this?
- b. Has the Justice Department sought information that it learned has been destroyed by any of the libraries?

27. I have learned that university officials in Arizona have approached the FBI in an attempt to assist with ongoing investigations on students suspected of terrorism. The university administration asked if it might be able to provide needed information to the FBI. The FBI refused these offers.

What is the policy of the Justice Department in terms of cooperating with local officials outside of the law enforcement community who may have information that would be helpful to terrorism investigations?

The Honorable John N. Hostettler

28. In his report on 9/11 detainees, the IG explains that after September 11, the Justice Department was concerned about the possibility of additional sleeper cell attacks and that the FBI immediately sought to shut down any "sleeper" cells of terrorists who might be preparing another wave of violence.

- a. Is this an accurate description of the Justice Department and FBI's focus following the September 11 attacks?
- b. Isn't it the Department of Justice's duty to use all legal tools, including the Immigration and Nationality Act, to protect the American people from those who would come to our country with malevolent intentions?

29. The IG's report on 9/11 detainees quotes you as stating that even though some of the 9/11 detainees may have wanted to be released or may have been willing to leave the country, it was in the national interest to find out more about them before permitting them to leave.

- a. What risk would it pose to the United States if our government were to allow a potential terrorist to leave our country without investigating the alien's possible ties to terrorism?
- b. What risks would it pose to our relations with another country if we were to return a possible terrorist to that country without investigating the alien's terrorist ties and informing the home country of our government's findings?

30. a. Do illegal aliens in the United States have an automatic right to release on bond during removal proceedings, or is release on bond a discretionary determination made in all cases by an appropriate officer after assessing whether the alien poses a risk to the national security?

b. Wouldn't it have been irresponsible for the INS or Justice Department to release an alien who the FBI has reason to believe is connected to the September 11 attacks specifically or to terrorism generally?

31. According to the Inspector General's report on September 11 detainees, there were 762 special interest detainees, of which 515 were deported after being "cleared" by the FBI. What does the word "cleared" mean? Is it true that an alien can be "cleared" for removal but still have connections to terrorism?

The Honorable Linda Sanchez

32. When Congress voted on the USA PATRIOT Act, it did so at the strong insistence of the DOJ that these new authorities were necessary in order to fight terrorism. It was further urged that the bill be enacted quickly so that we could get that fight underway. However, it is now clear that many of those new authorities are unnecessary in that regard. Now that we have had more time to look at the effectiveness of these authorities, we can see that some of them were improperly enacted. We can carefully review each new authority

and determine which ones, if any, will actually be useful in fighting a war on terrorism. What steps are you planning to take to get this process going and to ensure that it is completed properly and in a timely manner?

33. The OIG report contains horrifying examples of mistreatment of detainees, including the taunting of detainees by calling them "Bin Laden junior" and telling them "you're going to die here," "someone thinks you have something to do with [9/11] so don't expect to be treated well." The detainees were physically abused as well- an inmate with a broken arm and injured finger had his wrist and finger twisted by officers, another was thrown in his cell naked without a blanket. They were deprived medical attention for injuries sustained in those assaults because, in the words of one physician's assistant, they "were not entitled to the same medical or dental care as convicted federal inmates." Your spokesperson said the Department makes "no apologies" for this conduct. Do you stand by her statement?
34. Section 236A of the Immigration and Nationality Act makes an individual subject to mandatory detention as a person whom the Attorney General has reasonable grounds to believe is linked to terrorist activity, among other endangering activity. Custody under 236A requires "certification." Page 28 of the OIG report states that "as of March 26, 2003, no alien had been certified by the Attorney General under these provisions." Why were none of the 762 individuals certified under these provisions for custody?
35. What do you propose as a system for the Bureau of Prisons to report to the Department its policies and practices with respect to its treatment of immigration detainees?
36. It is now some 20 months since the government arrested and detained over 1000 immigrants in the wake of 9/11. Nevertheless, the names of those detained are still being withheld. The main justification for this massive refusal to release information is that doing so will provide a "road map" to al Qaeda and other terrorist groups as to the investigations. However, in the program to interview Muslims, in the special registration program, in the absconders program, in the asylum program, it is clear that the focus was on Muslim men from certain countries. In light of that, why is it necessary to withhold the names of the detainees? It is said that there are national security reasons to withhold some of the names, but it should be possible to release the rest of the names.